IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 478 OF 1998

1. Damodar Harishchandra Davne
2. Bhanudas Damodar Davne ....
Appellants.
(Orig.Accd.)
V/s

The State of Maharashtra .... Respondents.

Mr.Indrajeet Kulkarni, Adv. for the appellants.

Mrs.V.R. Bhonsale, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

22nd July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Palghar, Thane, in Sessions Case No.753 of 1996 on 20.4.1998 the appellants-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellants as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story state briefly is that the accused and the deceased resided in a village Savta, Taluka Dahanu, District Thane. Daughter of accused No.1 by name Damayanti was in love with Dilip the victim. This fact was not liked by the parents of the girl Damayanti. On 12.11.1994 at about 11.45 a.m. the accused called Dilip to their house to talk about the matter of deceased and Damayanti. When Dilip went to the house the accused persons poured kerosene on his body and put him on fire. The victim Dilip ran out of the house and jumped in nearby pond where he was seen by P.W.1-Narmada. On her complaint investigation was taken up and the accused persons were charged of having committed murder of Dilip the deceased. The prosecution examined nine witnesses to prove its case and the learned trial Judge on appreciation of this evidence convicted the accused as aforesaid.

4. The learned counsel appearing on behalf of accused assailed the order by saying that the conviction rests solely on the dying declaration and evidence of P.W.1-Narmada. No independent witnesses are examined, the dying declaration is not trustworthy, P.Ws.2, 3, 4 and 6 having turned hostile there is no material on record which can be considered as sufficient to warrant conviction. The learned public prosecutor appearing on behalf of the State pointed out that the evidence of P.W.1-Narmada was cogent and was duly corroborating the dying declaration which was recorded by P.W.8-Arun Patil. The dying declaration bears certificate of the doctor Palakraj P.W.7 and therefore the dying declaration is duly corroborated by P.W.1-Narmada. This clinching evidence in her opinion was adequate and was rightly accepted by

the learned trial Judge while convicting the accused.

5. As aforesaid we have reappreciated the evidence on record. It is true that P.Ws.2, 3, 4 and 6 have been declared hostile and consequently their evidence cannot be used for any purpose. However evidence of P.W.1-Narmada and P.W.7-Dr.Palakraj and P.W.8-Arun is in our opinion adequate. P.W.1 has said that she saw Dilip coming out of the house, was running, his clothes had caught fire at that time. He came out and fell in a ditch. The witness asked Dilip as to what happened when he told her that accused Nos.1 and 2 have set him on fire. He was then admitted to Cottage hospital and thereafter he died there. She has identified the clothes worn by the victim at the time of incident. She has stoutly denied the suggestion that victim committed suicide. Merely because she is an interested witness being sister of the victim it cannot be said that her testimony is liable to be rejected. As is settled law her testimony should be corroborative by trustworthy evidence. In this case we have that in the shape of deposition of P.Ws.7 and 8.

6. P.W.7-Dr.Palakraj has certified the dying declaration recorded by P.W.8-Arun, head constable. The dying declaration is consistent with all the formalities required to be observed while recording a dying declaration. P.W.7-Dr.Palakraj has stated how he examined the patient, found him conscious and in a fit condition to give the statement. He is therefore a witness not only to the testimony as to whether the condition of the victim was such as he could depose but also a person present and hearing what has been deposed to by the victim. P.W.8-Arun is the constable who recorded

the statement. He has also narrated how he recorded the statement, how certificate was obtained and how he wrote it down. The statement recorded by these two persons after hearing the victim is proved by them and therefore their testimony also is a piece of corroborative evidence in so far as statement of P.W.1 is concerned. In the dying declaration Exh.26 the victim has clearly stated as to how he was put on fire by the accused. Ex.22 is the certificate given by doctor in this case. It very specifically says that the patient was conscious and was in fit mental condition to make statement. Such certificate is also there at the end of the statement. It will thus be seen that the Exh.26 was recorded by P.W.8 in the presence of P.W.7-Dr.Palakraj who has certified at the beginning of the statement as also at the end of the statement that the patient was in fit condition to make statement. Apart from completing the necessary requirements Exh.26 is a document which is immediate recording of the statement of the victim. What has been written in Ex.26 is something which P.Ws.7 and 8 have also deposed. There is thus cogent evidence on record in the shape of testimony of P.Ws.1, 7 and 8, dying declaration Ex.26 and FIR Ex.31 which prove beyond doubt the involvement of the accused in burning the victim. The learned trial Judge has considered all these aspects in their right perspective and has given cogent reasons and findings. We are in agreement with the findings recorded by the learned trial Judge and consequently there is no substance in this appeal. In the result therefore the appeal fails and is dismissed.